Filed 2/9/09 A.H. v. County of Los Angeles CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

A.H., Plaintiff and Appellant, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents.	B203999 (Los Angeles County Super. Ct. No. TC020846)

APPEAL from a judgment of the Superior Court of Los Angeles County. William P. Barry, Judge. Affirmed.

Law Offices of Alaba S. Ajetunmobi for Plaintiff and Appellant.

Torres & Brenner, Leonard E. Torres and Anita Susan Brenner for Defendants and Respondents.

* * * * * * * *

In a juvenile court proceeding, A.H. was found to have abused his children and engaged in domestic violence. Following that proceeding, he sued the County of Los Angeles (County) and the social workers who had investigated the juvenile case and brought the petition against him (collectively, respondents). The trial court sustained respondents' demurrer to A.H.'s first amended complaint and entered a judgment of dismissal. Finding no viable cause of action, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The following summary is based on the allegations in the first amended complaint, the documents attached to the first amended complaint, and the documents of which we take judicial notice.[1]

1. Dependency Proceeding

On December 20, 2005, in case No. CK61853, the Department of Children and Family Services (DCFS) filed a petition pursuant to Welfare and Institutions Code section 300 (section 300 petition) against appellant. The petition alleged: (1) father physically abused D. by choking him and pushing him against a dresser; (2) D. needed medical treatment; (3) father told D. not to disclose the abuse; (4) the abuse endangered D. and his sister C. The petition also alleged that father (1) abused C. by striking her arms, legs, and face with fists and kicking her legs; (2) C. was treated for her injuries; (3) father previously banged C.'s head against a rail; (4) the abuse placed C. and D. at risk. Finally, the petition contained allegations that A.H. and the children's mother had a history of domestic violence.

DCFS's detention report indicated that prior referrals had resulted in inconclusive dispositions. DCFS further reported that A.H. denied the abuse and stated that mother encouraged the children to falsely allege abuse.

---

[1] On our own motion, we take judicial notice of the following documents in the juvenile dependency case No. CK61853: the petition filed December 20, 2005; minute orders dated January 30, 2006, February 14, 2006, February 28, 2006, March 2, 2006, March 15, 2006, March 30, 2006, April 5, 2006, and April 7, 2006. Judicial notice is proper under Evidence Code section 452, subdivision (d).

The court detained the children and ordered family reunification services for A.H. A hearing was held to determine the truth of the allegations in the petition. Father and several other witnesses testified at the hearing. Father admitted into evidence a "case plan"[2] and an "urgent care record" from Universalcare. Following the hearing, the juvenile court modified the petition to delete the allegation that D. needed medical treatment for his injury, and that father told D. not to disclose the physical abuse. As modified, the petition was sustained.

On November 29, 2006, the juvenile court's final judgment granted mother legal and physical custody of the children and father visitation rights. Prior to the juvenile court proceeding, A.H. and mother had agreed to share equally the care, custody, and control of the children.

2. Claim for Damages – Claim No. 06-1045991 PZ

On May 26, 2006, A.H. filed with the County a claim for damages. In his attached letter, A.H. stated, inter alia, that the juvenile court received evidence that his daughter lied about the abuse. The evidence was contained in the "case plan."

A.H.'s claim was deemed denied on July 10, 2006.

3. Civil Lawsuit

On March 19, 2007, A.H. filed a civil complaint in pro. per. for defamation and intentional infliction of emotional distress against DCFS and Maurice Ukattah, a social worker. The court sustained DCFS and Ukattah's demurrer and granted A.H. leave to amend the complaint.

On July 10, 2007, A.H. filed a first amended complaint. He was represented by counsel and alleged causes of action for violation of due process; violation of his civil rights (42 U.S.C.A. § 1983 (§ 1983)); negligence; negligent infliction of emotional distress; and intentional infliction of emotional distress. The County,

---

[2] Three of the 17 pages of the "case plan" are attached to the first amended complaint. Because the entire document is not included, we are unable to better describe the contents of the "case plan."

Ukattah, Lilia Merin, Theresa Bernoudy, and Blanca Vega were named as defendants. A.H. alleged that Ukattah, Merin, Bernoudy, and Vega were social workers responsible for investigating or supervising the investigation of child abuse complaints against A.H.

A.H. alleged that "[r]elying on the investigative reports and medical evidence presented by the defendants, the Juvenile Dependency Court on or about November 29, 2006, in its judgment terminated Plaintiff's custodial rights and granted physical custody to the other parents [*sic*] with 'monitored visits for father with the children's consent.'" A.H. alleged that the petition was based on the "fabricated" evidence that he abused his children and that he engaged in domestic violence. He also alleged respondents had suppressed exculpatory evidence and committed perjury.

With respect to exculpatory evidence, A.H. alleged:

> "On or about January 28, 2006, Mr. Ukattah, presented to Plaintiff 'a case plan' which was signed by Mr. Ukattah and Plaintiff [A.H.], and in which Mr. Ukattah noted in the evaluation that; [¶] 'The allegation for physical abuse as reported in the referral though originally substantiated based on the statement made by the child who appeared to have been mad with her father as the alleged bruises appeared to be "birth marks. . . ."'"

The "case plan" also stated, "'Though the allegation of physical abuse of the child [C.] by her father was sustained as the result of the child's statement, it appeared to be inconclusive as the story unraveled.'" A.H. also alleged that a Universalcare report showed that D.'s bruises were actually an "epidermal cyst" and constituted exculpatory evidence.

With respect to perjury, A.H. alleged that "[o]n or about April 05, 2006, while testifying before the Dependency Court, Mr. Ukattah disclosed that he did not investigate any report of physical abuse of [D.] in regards to the November 04, 2005, incident contrary to the charge brought against Plaintiff by [respondents]."

Respondents demurred to the first amended complaint.

4. Judgment

The court sustained the demurrer and entered a judgment of dismissal. The court found the lawsuit was barred by collateral estoppel, immunity, and the statute of limitations in the California Tort Claims Act. (Gov. Code, § 810 et seq.) The court also found that there is no tort for violation of due process[3] and the lawsuit constituted an impermissible collateral attack on the findings of the juvenile court.

A.H. timely appealed.

DISCUSSION

"On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed 'if any one of the several grounds of demurrer is well taken. [Citations.]' [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment." (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.)

We will first consider the scope of a social worker's immunity. Although much of the conduct in the present case is protected by absolute immunity, some of the allegations are not. To determine whether A.H. can assert a cause of action under

---

[3] Article I, section 7 of the California Constitution provides: "(a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws. . . ." A plaintiff is not entitled to damages for the violation of the due process clause of the state constitution. (*Javor v. Taggart* (2002) 98 Cal.App.4th 795, 807.)

any possible legal theory, we consider in detail the allegations that fall outside the scope of the social workers' immunity and conclude, as a matter of law, that A.H.'s allegations fail to support a viable cause of action.

I. Social Workers' Immunity

Both state and federal law provide immunity for social workers.

A. Immunity for State Claims

Government Code section 821.6 provides: "A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause." This applies where public employees have acted within the scope of their employment. (*Javor v. Taggart, supra,* 98 Cal.App.4th at p. 809.) A.H. alleges "all the named defendants . . . were acting within the course and scope of their employment with the Children and Family Services Department of the County of Los Angeles."

In 1995, the Legislature limited the social workers absolute immunity; it no longer extends to perjury, the failure to disclose exculpatory evidence, or fabrication of evidence.[4] (Gov. Code, § 820.21; see also *Beltran v. Santa Clara County* (2008)

---

[4] In its entirety, Government Code section 820.21 provides:

"(a) Notwithstanding any other provision of the law, the civil immunity of juvenile court social workers, child protection workers, and other public employees authorized to initiate or conduct investigations or proceedings pursuant to Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code shall not extend to any of the following, if committed with malice: [¶] (1) Perjury. [¶] (2) Fabrication of evidence. [¶] (3) Failure to disclose known exculpatory evidence. [¶] (4) Obtaining testimony by duress, as defined in Section 1569 of the Civil Code, fraud, as defined in either Section 1572 or Section 1573 of the Civil Code, or undue influence, as defined in Section 1575 of the Civil Code. [¶] (b) As used in this section, 'malice' means conduct that is intended by the person described in subdivision (a) to cause injury to the plaintiff or despicable conduct that is carried on by the person described in subdivision (a) with a willful and conscious disregard of the rights or safety of others."

514 F.3d 906, 908.) Therefore, with respect to the causes of action under state law, immunity applies to all of the social workers' conduct except the fabrication of evidence, perjury, and suppression of evidence.

B. Immunity for Section 1983 Federal Claim

Section 1983 provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

Immunity for the section 1983 cause of action is governed by federal law. (*Pitts v. County of Kern* (1998) 17 Cal.4th 340, 350.) "[S]ocial workers have absolute immunity when they make 'discretionary, quasi-prosecutorial decisions to institute court dependency proceedings to take custody away from parents.' [Citation.] But they are not entitled to absolute immunity from claims that they fabricated evidence during an investigation or made false statements in a dependency petition affidavit that they signed under penalty of perjury. . . ." (*Beltran v. Santa Clara County*, *supra*, 514 F.3d at p. 908.)

Like prosecutors, social workers also have no absolute immunity for investigatory conduct. (*Beltran v. Santa Clara County*, *supra*, 514 F.3d at p. 908.) "Where absolute immunity does not apply, qualified immunity protects official action, if the officer's behavior was 'objectively reasonable' in light of the constitutional rights affected. [Citations.] Objective reasonableness is measured by

the amount of knowledge available to the officer at the time of the alleged violation." (*Kulwicki v. Dawson* (3d Cir. 1992) 969 F.2d 1454, 1463.)

Thus, with respect to the federal cause of action, the social workers are absolutely immune except with respect to the fabrication of evidence and perjury. Their investigative conduct is subject to qualified immunity.

II. Allegations Outside the Scope of the Social Workers' Absolute Immunity

We now consider the allegations in the first amended complaint that arguably fall outside the scope of the social workers' absolute immunity.

A. Fabrication of Evidence

A.H. alleges that Ukattah fabricated the allegations of child abuse and domestic violence in the section 300 petition. Specifically, he states that the following allegations were fabricated: (1) D. was abused; (2) D. was treated for injuries as a result of abuse; and (3) A.H. abused the children's mother.

Although A.H. uses the term "fabrication," none of the factual allegations in the first amended complaint support his conclusion. Fabricated evidence is "Evidence manufactured or arranged after the fact, and either wholly false or else warped and discolored by artifice and contrivance with a deceitful intent." (Black's Law Dict. (6th ed. 1990) p. 590, col. 1.) To fabricate means to "invent" or to "make up for the purpose of deception." (Merriam-Webster's Collegiate Dict. (3d ed. 2003) p. 447.)

A.H. does not allege that Ukattah or any of the social workers deliberately invented or manufactured the evidence. Use of the label "fabrication of evidence" without allegations to support it is insufficient to withstand demurrer. (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125 [in reviewing a ruling on demurrer we do not "assume the truth of contentions, deductions, or conclusions of fact or law"].) At most, the allegations in the first amended complaint support the

conclusion that A.H. believes the allegations in the section 300 petition to be untrue.[5] As A.H. stated in his initial complaint, the gravamen of his claim is that "[a]llegations on November 4, 2005 are false and untrue." A.H. cannot relitigate whether the statements in the petition were true. Relitigation of the allegations in the section 300 petition is barred by the doctrine of collateral estoppel.

The elements of collateral estoppel are: (1) the issue sought to be precluded must be identical to that decided in the former proceeding; (2) the issue must have been litigated in the former proceeding; (3) the issue must have been necessarily decided in the former proceeding; (4) the decision must be final and on the merits; and (5) the party against whom preclusion is sought must be in privity with the party in the former proceeding. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341; see also *Zevnik v. Superior Court* (2008) 159 Cal.App.4th 76, 82-83.)

The issue – whether the allegations in the petition are true – is identical to the issue before the juvenile court. The section 300 petition alleged that A.H.'s children were described by Welfare & Institutions Code section 300 because of A.H.'s abuse of them and because of A.H.'s abuse of their mother. This is the same abuse that A.H. now alleges to be untrue.

The issue of abuse of A.H.'s children and their mother was necessarily litigated in the former proceeding. At a jurisdictional hearing, the juvenile court

---

[5] Because A.H. does not allege any facts supporting a legal conclusion that a social worker fabricated evidence, we need not and do not consider whether A.H. would be required to allege that the evidence was made up for the purpose of deception or whether the more rigid federal standard in the criminal context should apply. A person has a due process right "not to be subjected to criminal charges on the basis of false evidence that was deliberately fabricated by the government." (*Devereaux v. Abbey* (9th Cir. 2001) 263 F.3d 1070, 1074-1075.) The plaintiff must show that the officer continued his investigation "'despite the fact [he] knew or should have known that [plaintiff] was innocent or [the officer] used investigative techniques that were so coercive and abusive that [he] knew or should have known those techniques would yield false information.' [Citation.]" (*Cunningham v. City of Wenatchee* (9th Cir. 2003) 345 F.3d 802, 811.)

considered whether a minor is a person described by Welfare and Institutions Code section 300. (Welf. & Inst. Code, § 355.) A.H. had the opportunity to testify and several other witnesses testified at the hearing. A.H. also had the opportunity to present evidence. The court continued the hearing for A.H. to substitute a private attorney.

The truth of the allegations in the petition was necessarily decided in the former proceeding when the court sustained the allegations. The court found the children fell within the definition of Welfare and Institutions Code section 300 because they had been physically abused and because A.H. abused their mother.

The decision is final and on the merits. (*In re Joshua J.* (1995) 39 Cal.App.4th 984, 992.) A.H. is the same party who litigated in the prior proceeding.

A.H. argues that the interests of justice will not be served if collateral estoppel is applied in this case. He relies on *Teitelbaum Furs, Inc. v. Dominion Ins. Co.* (1962) 58 Cal.2d 601. In that case, the court held "that any issue necessarily decided in a prior criminal proceeding is conclusively determined as to the parties if it is involved in a subsequent civil action." (*Id.* at p. 607.) The court noted that a criminal judgment that is subject to collateral attack on the ground that it was obtained through perjured testimony or the suppression of evidence or has been set aside by a pardon is not subject to the doctrine of res judicata. (*Ibid.*) None of these factors are present in this case. As we will explain, the allegations of perjury and suppression of evidence are insufficient as a matter of law.[6]

---

[6] A.H. mistakenly argues that a different standard applied in the dependency proceedings. To sustain the petition, the juvenile court was required to make findings based on a preponderance of the evidence. (Welf. & Inst. Code, § 355, subd. (a).) Even if a higher standard applied in the juvenile court, that does not assist A.H. because if the court found by clear and convincing evidence that he engaged in the conduct, the court necessarily found the evidence sufficient to support the preponderance standard.

B. Perjury

A.H.'s claim of perjury appears to be based on a belief that Ukattah verified the section 300 petition alleging abuse and later testified that he did not investigate the abuse of D.[7] "The elements of perjury are 'a "willful statement, under oath, of any material matter which the witness *knows to be false*."'" (*People v. Garcia* (2006) 39 Cal.4th 1070, 1090, italics added.)

A.H. does not allege that Ukattah knew the allegations in the section 300 petition to be false, and therefore he does not assert a cause of action for perjury. Just as with his assertion of fabricated evidence, at most, the factual allegations in the first amended complaint support the conclusion that A.H. believes the allegations in the section 300 petition to be untrue. Although the use of the label "perjury" differs from the underlying proceeding, the gravamen of the claim is identical. For the same reasons as explained above with respect to the fabrication of evidence, all of the elements of collateral estoppel are satisfied. A.H. cannot relitigate the truth of the allegations in the petition by using the label "perjury." A.H. does not allege any conduct within the definition of perjury.

---

[7] The following allegation is contained in the first amended complaint: "On or about April 05, 2006, while testifying before the Dependency Court, Mr. Ukattah disclosed that he did not investigate any report of physical abuse of D. in regards to the November 04, 2005, incident contrary to the charge brought against Plaintiff by defendants." In his opening brief, A.H. explains that he believes the testimony to be contrary to allegations made in the section 300 petition.

It is very difficult to understand what A.H. alleges to be perjured testimony. A.H. attached one page of the testimony from the juvenile hearing to his first amended complaint and appears to argue that the testimony contradicts allegations in the petition. The single page of testimony does not specifically identify the witness. For purposes of this proceeding, we assume that Ukattah testified that that "the subsequent investigation you did was with respect to [C.] only." That testimony followed a question about a report on November 6, 2005.

C. *Suppression of Exculpatory Evidence*

A.H. alleges that Ukattah and DCFS failed to disclose known exculpatory evidence. The specific exculpatory evidence he relies upon is (1) evidence that D. had a cyst as described in a Universalcare report and (2) evidence that C. may have fabricated the allegations as explained in the "case plan."

No reading of the first amended complaint supports the conclusion that respondents suppressed evidence. The pages of the "case plan" attached to the complaint indicate A.H. acknowledged that he participated in the "case plan" development and that he received a copy of the "case plan." A.H. cannot now contradict the allegation that "[o]n or about January 28, 2006, Mr. Ukattah, presented to Plaintiff 'a case plan.'" (*Javor v. Taggart*, *supra*, 98 Cal.App.4th at p. 810.) Nor can he contradict the allegations that respondents "relied" on the Universalcare report, and that the juvenile court, "[r]elying on the investigative and medical reports presented by" respondents, found a prima facie case of abuse. In addition, the juvenile court order dated April 5, 2006, stated that the urgent care record which indicated that D. had a cyst was admitted into evidence. And in his letter to the County in support of his tort claim, A.H. stated that his attorney submitted the "case plan" in the dependency proceeding. Because the allegedly suppressed evidence was provided to A.H., A.H.'s allegations of the suppression of evidence are insufficient as a matter of law.

D. Investigatory Conduct

As explained above, in a section 1983 cause of action, the investigatory conduct of social workers is not protected by absolute immunity. (*Beltran v. Santa Clara County*, *supra*, 514 F.3d at p. 908.) A.H.'s only argument with respect to his section 1983 cause of action is that this court should follow *Beltran*. He argues: "Since prosecutors and others investigating criminal matters have no absolute immunity for their investigatory conduct, a fortiori, social workers conducting investigations have no such immunity."

The legal principle is not relevant here because A.H. alleges no specific investigatory conduct that violated his constitutional rights, and such a violation is a prerequisite to his section 1983 cause of action. (*Saucier v. Katz* (2001) 533 U.S. 194, 201.)

III. Conclusion

None of A.H.'s state causes of action against the social workers are viable. Conduct covered under the broad immunity in Government Code section 821.6 cannot support a cause of action, and A.H. does not argue otherwise. Instead, he argues that the first amended complaint contains allegations that fall outside the social workers' immunity including the fabrication of evidence, perjury, and suppression of evidence.

As a matter of law, A.H. has not alleged fabrication of evidence, perjury, or suppression of evidence. Thus, A.H.'s causes of action for violation of due process under the California Constitution, negligence, negligent infliction of emotional distress, and intentional infliction of emotional distress are not viable.

For the same reasons, A.H.'s federal section 1983 cause of action is not viable. He alleges: "By fabricating evidence against Plaintiff, by failing to disclose known exculpatory evidence in his favor, and by committing perjury in the charges filed against him, Defendants deprived Plaintiffs [*sic*] of his liberty interest in the care, custody, and control of his children without due process of law in violation of the Fourteenth Amendment to the United States Constitution. . . ." No factual allegations support A.H.'s premise that respondents failed to disclose exculpatory evidence or committed perjury. Qualified immunity applies to a social worker's investigatory conduct, but A.H. does not allege any investigatory conduct violated his civil rights.

A.H. also cannot assert a cause of action against the County. A.H. alleges that the social workers were agents of the County. A county cannot be liable for "any injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability." (Gov. Code, § 815.2, subd. (b).)

The court permitted A.H. an opportunity to amend his initial complaint, and A.H. does not argue that any defect in his first amended complaint may be cured by further amendment. Therefore, the trial court correctly sustained respondents' demurrer without leave to amend. Because we conclude that the judgment of dismissal was correct, we need not consider the other grounds upon which the trial court sustained respondents' demurrer.

DISPOSITION

The judgment of dismissal is affirmed. Respondents are entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

O'NEILL, J.*

We concur:

FLIER, Acting P. J.

BIGELOW, J.

---

* Judge of the Ventura County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.